



Agenda Date: 6/5/02

Agenda Item: 3G

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

CABLE TELEVISION

IN THE MATTER OF AN
INQUIRY INTO THE OPERATIONS
OF RCN OF NEW JERSEY

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ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
A PROTECTIVE ORDER

DOCKET NO. CX01070460

(SERVICE LIST ATTACHED)

BY THE BOARD*:

On November 13, 2001, RCN Telecom Services, Inc. (RCN) submitted documents to Office of Cable Television (OCTV) Staff pertaining to its business plans and financial reporting. The documents were submitted as part of the Board's ongoing investigation of RCN's cable television service and its commitment to upgrade and/or rebuild the thirty-one municipalities it serves in its Central New Jersey System. The information contained in the documents was considered confidential and proprietary by RCN.

On December 18, 2001, RCN filed a formal motion for a protective order with respect to these documents. RCN stated that the information filed with Staff included detailed financial schedules, marketing and personnel information (collectively, the "Information") and, as such, RCN considered the Information to be proprietary and confidential and therefore designated the documents as such. RCN requested that the Information be deemed proprietary and maintained as confidential by the Board.

RCN stated that the Information had been produced solely for its internal use and was being provided to the Board and to OCTV Staff at the Board's direction. RCN also stated that the Information had not been released to the public or to any other cable television regulatory body. In support of its motion, RCN cited In Re Solid Waste Utility Customer Lists, 106 N.J. 508 (1987), for the proposition that the Board is obligated to protect the confidentiality of a company's proprietary information from public disclosure. RCN also stated that "the legitimate public interest in certain information must be balanced with the competing right of privacy of the individuals possessing such information." *Id.* at 522. According to RCN, the release of the

*Commissioner Carol J. Murphy did not participate in the deliberations or vote on this matter.

Information would unduly harm RCN's legitimate business and competitive interests. In addition, RCN stated that the Information contained detailed financial projections, revenue and cost analyses, budget information, marketing projections, personnel information and other internally sensitive materials. RCN therefore requested that the Board afford the Information confidential treatment and seal it from public disclosure.

Upon careful review, the Board FINDS that RCN has demonstrated that the Information contained in the exhibits attached to its November 13, 2001 letter contain some legitimate proprietary information worthy of protection from public disclosure. Good cause has been shown by RCN that disclosure of some of the Information contained in the various exhibits could result in financial injury if it fell into the hands of competitors. Although the arguments presented by RCN against disclosure of some of the Information contain merit, the Board also FINDS that confidential treatment should not be accorded to all the Information since disclosure would not divulge competitively valuable and proprietary information.

Specifically, the Information provides:

- 1) Exhibit A (1-3) - customer service issues;
- 2) Exhibit B - internal reports concerning RCN's call centers;
- 3) Exhibit C (1-4) - cross-subsidization and cost allocation issues, and
- 4) Exhibit D (1-2) - franchise renewal program.

RCN has provided as Exhibit A1 what appears to be a typical customer service (CSR) schedule for various out-of-state service centers. Staffing levels at the remaining customer centers serving RCN's Central New Jersey System are contained in Exhibit A2. According to RCN, calls concerning cable television and cable modem services are routed to different CSRs based upon the customers response to a prompt from the telephone system's automated response unit. A sampling of the product materials and rates provided to CSRs is attached as Exhibit A3.

With respect to Exhibits A1 and A2, disclosure of the numbers of CSRs per call center and the number of calls received on a daily and monthly basis could be potentially harmful to RCN if this information were to fall into the hands of competitors. Additionally, there appears to be no legitimate reason for the affected municipalities and the general public to know specific information regarding customer service issues since they do not relate to the costs and status of the rebuild/upgrade plan. There is no potential benefit to the municipalities in having information regarding the average number of calls received per day or per month by each CSR for each customer service number and center location or the staffing levels at customer service centers.

In addition, this is information not generally divulged. Consistent with the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., which becomes effective on July 7, 2002, the information would qualify as an exception to the government record designation and be considered confidential since it contains portions of financial information which, if disclosed, could give an advantage to competitors. Therefore, RCN's request for confidential treatment for Exhibits A1 and A2 is granted. As for Exhibit A3, information concerning RCN's programming and rates is readily obtainable from tariff and rate cards available to the public. Disclosure of this information would not harm RCN by giving an unfair business advantage to competitors. Therefore, the request for confidential treatment for Exhibit A3 is denied.

According to RCN, Exhibit B contains telephone traffic feedback of its customer service operations and basically gives specifics regarding group usage by call center and the number of telephone trunk lines per service center. This is not information that is generally divulged to the public, however, the information could benefit RCN's competitors if it fell into their hands. In addition, there is no legitimate reason for the affected municipalities to have telephone feedback of customer service operations. Consistent with OPRA, the information would qualify as an exception to the government record designation and be considered confidential since it contains portions of financial information which, if disclosed, could give an advantage to competitors. Therefore, RCN's motion with respect to Exhibit B is granted.

Exhibit C addresses RCN's internal business structure relating to cost allocation of the company's expenses. According to RCN, these documents demonstrate the treatment of revenues, costs and expenses for the Central New Jersey System and RCN business units. C1 contains responses to OCTV Staff interrogatories on cross-subsidization issues. RCN maintains that the Central New Jersey system does not subsidize any other RCN corporation. Exhibit C2 provides a schedule delineating the methodology employed in setting forth allocations. The allocation criteria contain nationwide information, which is beyond RCN's Central New Jersey System and the jurisdiction and control of the Board. Release of the information in Exhibit C1 and C2 could be potentially harmful to RCN if it fell into the hands of competitors. Under OPRA, the information contained in Exhibits C1 and C2 would qualify as an exception to the government record designation and be considered confidential since it contains financial information which could be advantageous to competitors. Therefore, RCN's motion with respect to Exhibits C1 and C2 is granted.

Exhibit C3 is also marked confidential by RCN and contains financial statements relevant to the company's operations. The statements set out revenues, costs and expenses. If the financial statements fall into the hands of competitors, it could be potentially harmful to RCN. There also appears to be no legitimate reason to reveal the financial statements since they do not directly relate to RCN's ability to perform the rebuild/upgrade. Therefore, confidential treatment is granted for Exhibit C3. Similarly, Exhibit C4 contains capital expenses and revenue projections on a system-wide basis. If the exhibit were revealed to competitors, it could harm RCN. This is consistent with OPRA which exempts certain information, such as trade secrets and proprietary commercial or financial information, from the government record designation. Therefore, RCN's motion for confidentiality is granted for Exhibits C3 and C4.

Exhibit D essentially concerns franchise renewal activity. Exhibit D1 is a franchise renewal chart which apparently serves as an internal franchise tracking mechanism for RCN. According to RCN, the chart contained in D1 lists all franchised communities, information regarding the date of issuance of the existing Certificate of Approval (COA), the date of expiration of the COA and the due date of the Application for Renewal of Municipal Consent. Exhibit D2 provides no specific information and is either a redacted version of RCN's renewal schedule plan or evidence that such a plan does not exist. The schedule merely provides spreadsheet headings. According to RCN, D2 is an internal franchise tracking spreadsheet for the municipal and COA process. Exhibit D1 does not appear to contain proprietary and confidential information. Its content can be deduced from readily available public sources. The same can be said of Exhibit D2. As noted above, D2 appears to be nothing more than a blank spreadsheet with headings for the Central New Jersey System with no actual detail contained therein. Therefore, RCN's motion for confidential treatment with respect to Exhibit D1 and D2 is denied.

In summary and consistent with the reasoning detailed herein, the Board HEREBY GRANTS

RCN's motion for confidentiality for Exhibits A1 and A2, B and C1, C2, C3 and C4, and DENIES the motion for Exhibits A3, D1 and D2. The information deemed non-confidential will be made available in the Board's files ten (10) days after issuance of this Order.

DATED: June 10, 2002

BOARD OF PUBLIC UTILITIES
BY:

(signed)

JEANNE M. FOX
PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

(signed)

KRISTI IZZO
SECRETARY